IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

I.T.A. No. 371 of 2005

DATE OF DECISION: 20.9.2007

The Commissioner of Income-tax, Panchkula

…Appellant

Versus

M/s Haryana Warehousing Corporation

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Yogesh Putney, Advocate,
for the appellant-revenue.

Mr. M.L. Garg, Advocate,
for the respondent-assessee.

M.M. KUMAR, J.

This is revenue's appeal under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act'), against order dated 24.2.2005, passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh (for brevity, 'the Tribunal), in I.T.A. No. 173/Chandi/2001, in respect of assessment year 1987-88. It is claimed that the following substantial question of law would arise for determination of this Court:-

Whether in the circumstances and facts of the case, the ITAT was justified in deleting interest under Section

215/217 of the Income-tax Act, 1961, when it is mandatory in nature?

Brief facts of the case are that the assessee has been claiming exemption of its entire income under Section 10(29) of the Act, which was being allowed to it on the basis of judgment of Allahabad High Court in the case of **U.P. State Warehousing Corporation v. CIT, 195 ITR 273**. During the assessment year 1987-88, the Assessing Officer observed that the assessee's income other than from its main income was not eligible for exemption under Section 10(29) of the Act. The aforementioned view was taken on the basis of the judgment of Rajasthan High Court in the case of **Commissioner of Income-tax v. Rajasthan Warehousing Corporation, (1994) 210 ITR 906** and in view of judgment of Hon'ble the Supreme Court in the case of **Orissa State Warehousing Corporation v. CIT, (1999) 237 ITR 589**. Subsequently, assessment was reopened under Section 147 of the Act after issuance of notice dated 10.2.1998 under Section 148 of the Act. After completing the assessment under Section 143(3)/147 of the Act, exemption under Section 10(29) of the Act was withdrawn in respect of such other incomes. The Assessing Officer also charged interest under Section 215/217 for the relevant assessment year on the assessed income (A-1). On appeal filed by the assessee, the CIT (A) upheld the order of the Assessing Officer. However, interest charged under Section 215/217 of the Act was deleted. Further appeals filed by the revenue in respect of assessment years 1987-88, 1988-89 and 1993-94 were

dismissed by the Tribunal observing that the assessee cannot be held liable to pay advance tax for the year ending 31.3.1993, as advance tax was only leviable following the case of Rajasthan State Warehousing Corporation (supra) as approved by Hon'ble the Supreme Court in the case of Orissa State Warehousing Corporation (supra). It has been, thus, held that the assessee is not liable to pay advance tax on or before such decision of the Supreme Court.

We have heard learned counsel for the parties and perused the record with their able assistance.

After hearing learned counsel it has emerged that the aforementioned question stands already answered by a Division Bench of this Court in the case of **Commissioner of Income-tax, Panchkula v. M/s Haryana Warehousing Corporation (I.T.A. No. 242 of 2006, decided on 20.4.2007)**, by rejecting the submission of the revenue. The Division Bench observed as under:-

> " Section 210 of the Act provides for payment of advance tax by a person who is liable to pay advance tax. In the instant case, when the Assessing Officer had himself assessed the income originally at 'nil', the assessee was not liable to pay advance tax. Interest under Section 234B and 234C of the Act can be charged only if there is any failure on the part of the assessee to pay advance tax. ……"

The Division Bench further went on to observe as under:-

" If the assessee fails to pay advance tax which he is liable to pay, then charging of interest under Section 234B of the Act is mandatory, but in the present case, the provisions of Section 234B of the Act cannot be invoked.

It may also be noted that admittedly upto the assessment year 1991-92, the assessee did get the benefit of Section 10(29) of the Act. It was assessed on 'nil income. The exemption was granted on the basis of Allahabad High Court decision in Commissioner of Income-tax v. U.P. State Warehousing Corporation, (1992) 195 I.T.R. 273 (All.). As no other decision was brought to the notice, therefore, the Revenue accepted the said decision. The assessee acted bonafide in conformity with the decision of the High Court, just because the decision was reversed by the Apex Court, liability to pay advance tax cannot be fastened on the assessee. At the relevant point of time, it was not possible for the assessee to foresee the decision of the Supreme Court on the point "*Lex non go co git ad impossibilla*" (Law cannot compel you to do the impossible). Before invoking Section 234B of the Act, it is essential to see whether the assessee comes within the sweep of this section. The pre-condition for invoking Section 234B of the Act is that the assessee must be fastened with the liability to pay advance tax. As the

assessee was not liable to make the payment of advance tax, the case of the assessee would not come within the ambit of Section 234B of the Act."

Accordingly, the question is answered against the revenue in terms of Division Bench judgment of this Court rendered in the case of M/s Haryana Warehousing Corporation (supra).

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 20, 2007
Pkapoor